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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,530	10/18/2001	Ross Faulkner Smith	60001.0097US01/MS172025.1	7764

27488   7590   04/06/2006

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EXAMINER
ENGLAND, DAVID E

ART UNIT	PAPER NUMBER
2143	

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/982,530	SMITH ET AL.
	Examiner	Art Unit	
	David E. England	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>23 January 2006</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-11,19 and 20</u> is/are pending in the application.

　　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-11,19 and 20</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

　　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　　a)☐ All   b)☐ Some * c)☐ None of:

　　　1.☐ Certified copies of the priority documents have been received.

　　　2.☐ Certified copies of the priority documents have been received in Application No. _____.

　　　3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

　　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
　　Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
　　Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

1.   Claims 1 – 11, 19 and 20 are presented for examination.

Claim Rejections - 35 USC § 112

2.   The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3.   Claims 1 – 11, 19 and 20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

4.   In claims 1 and 5, the limitation of, "the client-side system logs, in a logging file, <u>any user interactions</u> performed in an application program module", is not described in the specification to have one skill in the art to ascertain how the client-side system can log in a log file <u>any user</u> interactions performed in the application program module. Applicant's specification states that only specific "<u>items may be recorded</u>" which <u>is not "any"</u>. What is described in the specification is that, "*For any action that a user performs in the software application, <u>several items may be recorded in a data file such as a user ID, an absolute time-stamp, the method invoked (keyboard, mouse, etc.) including application source (if the software application includes more than one application), and details such as the dialog invoked, button pressed,</u>*

menu used, menu item selected, application launch, application termination, as well as

environment variables, such as operating system, screen resolution, etc.

5.   *To enable logging within the application program module, the user, in one embodiment*

of the present invention, agrees to have their actions monitored in exchange an incentive (such

as free software) and submits a survey that may collect demographic information about that

user. If accepted to the study, the user receives a 10 copy of the software application, as well as a

set-up program that sets up the study on the users machine(s). ", (pages 3 and 4 of the

Applicant's specification). As the Applicant can see that <u>not all or "any"</u> user interactions are

logged into a logging file.

6.   Since there is no disclosure of the claimed invention having the ability to log "<u>any user</u>

<u>interaction</u>", the Examiner suggests that the Applicant amend to say that "the client-side system

logs, in a logging file, <u>a plurality of user interactions</u> performed in an application program

module."

7.   Furthermore, the limitation of, "wherein when any feature of the application program

module is used, one of the plurality of hooks is triggered and a data record is generated," is also

applied to the above cited area.

8.   All other claims are rejected for their dependency on the claims discussed above.

Claim Rejections - 35 USC § 103

9.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

10.   Claims 1, 3, 4, 6, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Terry (6961765) in view of Gruyer et al. (2002/0112048) (hereinafter Gruyer).

11.   Referencing claim 1, as closely interpreted by the Examiner, Terry teaches a client-side

system stored on a computer, wherein the client-side system logs, in a logging file, any user

interactions performed in an application program module and periodically uploads the logging

files to a remote server system for analysis of the logging file, wherein the client-side system

comprises:

12.   a logging code in communication with the application program module, wherein the

logging code comprises a plurality of hooks into the application program module and an

operating system of the computer, wherein when a user performs any action within an

application program, one of the plurality of hooks is triggered and a data record is generated,

(e.g., col. 13, lines 30 – 52);

13.   a logging file in communication with the logging code, wherein the logging code stores

the data record in the logging file, (e.g., col. 13, lines 30 – 52 & col. 14, line 54 – col. 15, line

30);

14.   a script file in communication with the logging file, wherein the script file is operative to

upload the logging file to the remote server system, (e.g., col. 15, lines 18 – 65), but does not

specifically teach a set-up program module, wherein launching the set-up program module

signifies user consent to have application program actions logged.

15.   Gruyer teaches a set-up program module, wherein launching the set-up program module

signifies user consent to have application program actions logged, (e.g., ¶ 0040 – 0041). It would

have been obvious to one of ordinary skill in the art at the time the invention was made to

combine Gruyer with Terry because it enables a users the choice of whether or not they wish to

be monitored by a network administrator. Furthermore, unlawfully loading of software that

monitors users activities is an invasion of privacy and against the law, spyware.

16.   Referencing claim 3, as closely interpreted by the Examiner, Terry teaches the script file

uploads the logging file to the remote server system via an Internet connection, (e.g., col. 15,

lines 18 – 65).

17.   Referencing claim 4, as closely interpreted by the Examiner Terry teaches the script file

and logging code are generated by a set-up program module included with the application

program module and stored on the computer, (e.g., col. 13, lines 30 – 52 & col. 14, line 54 – col.

15, line 30).

18.   Referencing claim 6, as closely interpreted by the Examiner, Terry teaches each recorded

user interaction comprises a time stamp, (e.g., col. 16, line 49 – col. 17, line 18),

19.   a user identification, (e.g., col. 17, lines 33 – 65),

20.   a UI element identifier, (e.g., col. 17, lines 33 – 65), and

21.   a description of the method invoked to interact with the software application program

module, (e.g., col. 17, lines 33 – 65).

22.   Referencing claim 19, as closely interpreted by the Examiner, Terry teaches each

recorded user interaction further comprises at least one of the following;

23.   an application source, (e.g., col. 8, lines 14 – 30);

24.   verbal dialog invoked, (e.g., Abstract & col. 12, line 47 – col. 13, line 16);

25.   button pressed, (e.g., col. 8, lines 14 – 30);

26.   menu used, (e.g., col. 8, lines 14 – 30);

27.   menu item selected, (e.g., col. 8, lines 14 – 30);

28.   application launch, (e.g., col. 8, lines 14 – 30);

29.   application termination, (e.g., col. 8, lines 14 – 30);

30.   operating system used, (e.g., col. 8, lines 14 – 30); and

31.   screen resolution.

32.   Referencing claim 20, as closely interpreted by the Examiner, Motoyama teaches the

description of the method invoked to interact with the software application program module

comprises at least one of keyboard or mouse, (e.g., col. 8, lines 14 – 30).

33.   Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Terry and

Gruyer and in further view of Burgess et al. (5796633) (hereinafter Burgess).

34.   Referencing claim 2, as closely interpreted by the Examiner, Terry and Gruyer do not

specifically teach a scheduled event stored in the operating system and created in a

predetermined time period, wherein, in response to the scheduled event being triggered, the

script file uploads the logging file to the remote server system. Burgess teaches a scheduled

event stored in the operating system and created in a predetermined time period, wherein, in

response to the scheduled event being triggered, the script file uploads the logging file to the

remote server system, (e.g., col. 8, lines 19 – 63, *"Logging thread 50 logs performance data*

each predetermined time interval."). It would have been obvious to one of ordinary skill in the

art at the time the invention was made to combine Burgess with the combine system of Terry and

Gruyer because starting and ending specific events and labeling them with a time stamp in the

operating system give the system the ability to maintain the newest information available and

discard old information that isn't of use to the system anymore.

35.   Referencing claim 5, as closely interpreted by the Examiner, Terry teaches a computer-

implemented method for tracking any user interactions performed in a software application

program module stored on the user's computer, the method comprising the steps of:

36.   determining if any user interaction performed in the software application program

module has occurred, (e.g., col. 13, lines 30 – 52 & col. 14, line 54 – col. 15, line 30);

37.   recording the user interaction in a logging file on the computer, (e.g., col. 13, lines 30 –

52 & col. 14, line 54 – col. 15, line 30);

38.   determining whether the logging file exists, and, if so, then uploading the logging file to a

remote analysis server, (e.g., col. 13, lines 30 – 52 & col. 14, line 54 – col. 15, line 30), but does

not specifically teach allowing a user to determine if they wish to have interactions with the

software application program module logged;

39.   determining that a scheduled event is triggered during a predetermined time period.

40.   Gruyer teaches allowing a user to determine if they wish to have interactions with the

software application program module logged, (e.g., ¶ 0040 – 0041). It would have been obvious

to one of ordinary skill in the art at the time the invention was made to combine Gruyer with

Terry because of similar reasons stated above.

41.   Burgess teaches determining that a scheduled event is triggered during a predetermined

time period, (e.g., col. 8, lines 19 – 63, *"Logging thread 50 logs performance data each*

predetermined time interval."). It would have been obvious to one of ordinary skill in the art at

the time the invention was made to combine Burgess with the combine system of Terry and

Gruyer because of similar reasons stated above.

42.   Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Terry, Gruyer and

Burgess in further view of Jawahar et al. (6256620), (hereinafter Jawahar).

43.   As per claim 7, as closely interpreted by the Examiner, Terry, Gruyer and Burgess do not

specifically teach the step of deleting the logging file on the computer after it has been uploaded.

Jawahar teaches the step of deleting the logging file on the computer after it has been uploaded,

(e.g., col. 15, lines 17 – 32). It would have been obvious to one of ordinary skill in the art, at the

time the invention was conceived, to combine Jawahar with the combine system of Terry, Gruyer

and Burgess because deleting the logging file after sending it to a server would free up more

memory at the users terminal for additional logging data to be stored and transferred.

44.   Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Terry, Gruyer,

Burgess and Jawahar as applied to claims 5 – 7 above, and in view of Ploetz et al. (6738798),

(hereinafter Ploetz).

45.   As per claim 8, as closely as interpreted by the Examiner, Terry, Gruyer, Burgess and

Jawahar do not specifically teach the step of renaming the logging file with a random number

before uploading the logging file to the remote analysis server. Ploetz teaches the step of

renaming the logging file with a random number before uploading the logging file to the remote

analysis server, (e.g., col. 7, lines 45 – 64). It would have been obvious to one of ordinary skill in

the art, at the time the invention was conceived, to combine Ploetz with the combine system of

Terry, Gruyer, Burgess and Jawahar because renaming a file with a random number could

prevent a system from naming a file with the same name.

46.   Claims 9 – 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Terry,

Gruyer, Burgess, Jawahar and Ploetz as applied to claims 1 – 3 and 5 – 8 above, and in view of

Godfrey et al. (6662217), (hereinafter Godfrey).

47.   As per claim 9, as closely interpreted by the Examiner, Terry teaches comprising the

steps of opening a session with the remote analysis server, placing the logging file into a

database record set and wherein the step of uploading the logging file comprises posting the

database record set to the remote analysis server, (e.g., col. 17, lines 33 - 61), but does not

specifically teach Active Data Object database. Godfrey teaches the steps of opening an Active

Data Object (ADO) session with the remote analysis server, placing the logging file into an ADO

database record set and wherein the step of uploading the logging file comprises posting the

ADO database record set to the remote analysis server, (e.g., col. 5, lines 13 – 28). It would have

been obvious to one of ordinary skill in the art, at the time the invention was conceived, to

combine Godfrey with the combine system of Terry, Gruyer, Burgess, Jawahar and Ploetz

because utilizing an ADO database gives the system the ability for the database to reside

anywhere on the network.

48.   As per claim 10, as closely interpreted by the Examiner, Terry does not specifically teach

the remote analysis server is a Hypertext Transfer Protocol (HTTP) server. Gruyer teaches the

remote analysis server is a Hypertext Transfer Protocol (HTTP) server, (e.g., ¶ 0065). It would

have been obvious to one of ordinary skill in the art, at the time the invention was conceived, to

combine Gruyer with Terry because utilizing an HTTP server, (web server), give the system the

ability to communicate with users from different networks on the web.

49.   As per claim 11, as closely interpreted by the Examiner, Terry teaches a computer-

readable medium comprising computer-executable instructions, which when executed, are

operable to perform the steps of claim 10, (e.g., col. 16, line 49 – col. 17, line 18).

Response to Arguments

50.   Applicant's arguments with respect to claims 1 – 11, 19 and 20 have been considered but are moot in view of the new ground(s) of rejection under 112 1st paragraph, Terry and Gruyer.

Conclusion

51.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

52.   a.   Schumacher et al. U.S. Patent No. 6028664 discloses Method for selecting communication access method for local area networks.

53.   b.   Lemon U.S. Patent No. 7016953 discloses HTTP transaction monitor.

54.   c.   Dempski U.S. Patent No. 6883032 discloses Method and system for collecting data on the internet.

55.   d.   Barritz et al. U.S. Patent No. 6938027 discloses Hardware/software management, purchasing and optimization system.

56.   e.   Anderson et al. U.S. Patent No. 5790127 discloses Supervising activations states in application sharing.

57.   f.   Huntsman U.S. Patent No. 5801689 discloses Hypertext based remote graphic user interface control system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David E. England whose telephone number is 571-272-3912. The examiner can normally be reached on Mon-Thur, 7:00-5:00.
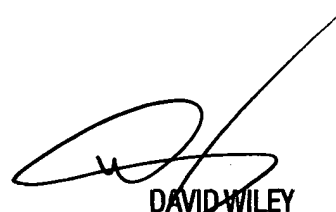
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David E. England
Examiner
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DAVID WILEY
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